

COURT OF APPEALS OF INDIANA

Grim v. State

797 N.E.2d 825 (Ind. Ct. App. 2003) · No. No. 33A01-0212-CR-479 · Decided October 23, 2003

SUMMARY

The Indiana Court of Appeals reviewed Michael A. Grim's challenge to the sufficiency of the evidence supporting convictions for carrying a handgun without a license, possession of methamphetamine, possession of chemical precursors with intent to manufacture, possession of paraphernalia, and unlawful use of a police radio. The court affirmed the handgun and police-radio convictions but reversed the convictions involving narcotics, chemical precursors, and paraphernalia because the evidence was insufficient to establish the required constructive possession or recklessness elements. The case was remanded with instructions to vacate the reversed convictions.

CASE DETAILS

COURT	Court of Appeals of Indiana
WRITING FOR THE COURT	Sullivan, Judge; Riley, Judge; Friedlander, Judge
JURISDICTION	Indiana
DECIDED	October 23, 2003
DOCKET	No. 33A01-0212-CR-479
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Following a jury trial and convictions on five criminal counts, Grim appealed, challenging the sufficiency of the evidence supporting each conviction.
STANDARD OF REVIEW	For a sufficiency-of-the-evidence claim, the court considers only the evidence favorable to the judgment and reasonable inferences therefrom, does not reweigh evidence or judge witness credibility, and affirms if substantial evidence of probative value permits a reasonable trier of fact to find guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Indiana Court of Appeals opinion; precedential unless subsequently limited or overruled.
PARTIES	Michael A. Grim v. State of Indiana

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QUESTIONS PRESENTED

1. Whether sufficient evidence supported Grim's conviction for carrying a handgun without a license when the handguns were found under the passenger seat and the State relied on constructive possession.
2. Whether sufficient evidence established that Grim constructively possessed methamphetamine concealed in a waistband carrying case.
3. Whether sufficient evidence established that Grim constructively possessed at least two chemical reagents or precursors with intent to manufacture methamphetamine.
4. Whether sufficient evidence established the reckless possession element of possession of paraphernalia.
5. Whether Indiana Code section 35-44-3-12 required the State to prove that Grim possessed a police radio while committing, furthering, or avoiding detection of a crime.
6. Whether sufficient evidence established that Grim constructively possessed a police radio.

HOLDINGS

1. Constructive possession may support a conviction for carrying a handgun in a vehicle. The State must prove that a handgun was in the vehicle, that the defendant had control of the weapon or vehicle with knowledge of the weapon's presence, and that the defendant intended to convey or transport the weapon. The evidence was sufficient because two handguns were beneath the passenger seat where Grim had been sitting, one was visibly protruding, and ammunition was in plain view.
2. The evidence was insufficient to prove that Grim constructively possessed the methamphetamine found in a concealed waistband carrying case beneath the passenger seat.
3. The evidence was insufficient to prove that Grim constructively possessed two or more chemical reagents or precursors with intent to manufacture methamphetamine.
4. The evidence was insufficient to prove the required reckless culpability for possession of paraphernalia, even though the evidence showed that Grim knew of and could control the glass pipe.
5. For a person not within an exception in Indiana Code section 35-44-3-12(b), the State need prove only knowing or intentional possession of a police radio under subsection (a)(1); it need not prove that the radio was possessed while committing a crime, to further a crime, or to avoid detection.
6. The evidence was sufficient to establish that Grim constructively possessed the police radio.

KEY QUOTATIONS

"To convict a defendant of carrying a handgun in a vehicle, the State must present evidence that a handgun was found in a vehicle and that the defendant had control of either the weapon or of the vehicle with knowledge of the weapon's presence." (831)

“Constructive possession occurs when an individual has “the intent and capability to maintain dominion and control over the [contraband].” (831)

“The State is required to prove all of the elements of a crime beyond a reasonable doubt, including the “reckless” culpability component for the crime of reckless possession of paraphernalia.” (834)

“Thus, to convict Grim of Count V, unlawful use of a police radio, the State was required to prove only that Grim (1) knowingly or intentionally (2) possessed a police radio.” (835)

FACTUAL BACKGROUND

Police surveilled a vehicle after Grim and another person were observed purchasing large quantities of pseudoephedrine. Grim was later arrested while sitting in the passenger seat of that vehicle. An inventory search revealed two handguns and ammunition near or beneath the passenger seat, a police scanner on the dashboard, methamphetamine concealed in a waistband carrying case, a glass pipe in the center console, and various materials associated with methamphetamine manufacture. The majority concluded that the evidence established constructive possession of the handguns and scanner but did not establish Grim's knowledge of the concealed methamphetamine or lithium batteries, or the recklessness required for possession of paraphernalia.

PROCEDURAL HISTORY

The State charged Grim with possession of a narcotic drug, possession of two or more chemical reagents or precursors with intent to manufacture, carrying a handgun without a license, possession of paraphernalia, and unlawful use of a police radio. A jury convicted him on all counts on September 23 and 24, 2002; Grim then admitted two prior felony convictions that enhanced the handgun conviction to a Class C felony. The Court of Appeals affirmed the handgun and police-radio convictions, reversed the narcotic-drug, precursor, and paraphernalia convictions for insufficient evidence, and remanded with instructions to vacate those convictions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed to vacate the convictions for possession of a narcotic drug, possession of two or more chemical reagents or precursors with intent to manufacture, and reckless possession of paraphernalia. The convictions for carrying a handgun without a license and unlawful use of a police radio were affirmed. Because the reversals rested on insufficient evidence, retrial was barred by double jeopardy.

CASES CITED

- *Lycan v. State*, 671 N.E.2d 447, 456 (Ind. Ct. App. 1996)
- *VanMatre v. State*, 714 N.E.2d 655, 658 (Ind. Ct. App. 1999)
- *Walker v. State*, 631 N.E.2d 1 (Ind. Ct. App. 1994)
- *D.C.C. v. State*, 695 N.E.2d 1015, 1016 n. 1 (Ind. Ct. App. 1998)
- *Klopfenstein v. State*, 439 N.E.2d 1181, 1184-85 (Ind. Ct. App. 1982)

- Henderson v. State, 715 N.E.2d 833, 835-36 (Ind. 1999)
- Hoffman v. State, 520 N.E.2d 436 (Ind. 1988)
- Taylor v. State, 482 N.E.2d 259 (Ind. 1985)
- Woods v. State, 471 N.E.2d 691, 693-94 (Ind. 1984)
- State v. Hill, 688 N.E.2d 1280 (Ind. Ct. App. 1997), trans. denied
- Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999)
- Armour v. State, 762 N.E.2d 208, 216 (Ind. Ct. App. 2002), trans. denied
- Godar v. State, 643 N.E.2d 12, 15 (Ind. Ct. App. 1994), trans. denied
- Vertner v. State, 793 N.E.2d 1148, 1154-57 (Ind. Ct. App. 2003)
- Wallman v. State, 419 N.E.2d 1346, 1350 (Ind. Ct. App. 1981)
- Cole v. State, 588 N.E.2d 1316 (Ind. Ct. App. 1992)
- Iddings v. State, 772 N.E.2d 1006 (Ind. Ct. App. 2002), trans. denied
- White v. State, 772 N.E.2d 408, 413 (Ind. 2002)